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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ELIAS RUSSEGGER, GERHARD SCHEFBANKER, MARTIN WALLINGER, and KEVIN PTASIENSKI

Appeal 2014-007632
Application 13/176,372
Technology Center 3700

Before MICHELLE R. OSINSKI, BEVERLY M. BUNTING, and GORDON D. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellants have requested a rehearing under 37 C.F.R. § 41.52 in response to the Decision of the Board mailed February 1, 2017. Requests for Rehearing are limited to matters overlooked or misapprehended by a Panel in rendering a decision. *See* 37 C.F.R. § 41.52. In the Decision, we affirmed prior art rejections of claims 9–12, 14, and 21–31. Appellants, in their request for rehearing, fail to apprise us of matters we overlooked or misapprehended.

Appellants request for rehearing is therefore DENIED.

Appellants argue that the Examiner and the Board have misconstrued the terms "layered process" and "thin film." Request for Rehearing (hereinafter "Request") 1. These terms appear in claim 9 in the limitation "forming conductive overlays . . . by a layered process selected from a group consisting of thick film, thin film, thermal spray and sol-gel processes." Appeal Br. 12 (Claims App'x). Appellants argue that the Board failed to give weight to and misconstrued the Specification. Request 2.

Specifically, Appellants argue that claim 9 is limited to layers "formed through application or accumulation of a material." Request 4 (quoting Spec. ¶ 43).

> As used herein, the term "layering processes" should be construed to include processes that generate at least one functional layer (e.g., dielectric layer, resistive layer, among others), wherein the layer is formed through application or accumulation of a material to a substrate, target, or another layer using processes associated with thick film, thin film, thermal spraying, or sol-gel among others. These processes are also referred to as "layering processes."

Spec. ¶ 43. Paragraph 43, thus, defines how "layering process[]" is to be construed. Appellants argue that as properly construed, "layering process includes a process that generates a layer through the application or accumulation of material." Request 3. Appellants further point out that examples of layering processes are cited in the Specification. Request 3.

Appellants argue that "a thin film process would include the application or accumulation of the material, such as by way of example CVD and PVD, and is not just any process that can form a thin layer or a thin heater regardless of the manufacturing steps." Request 4. The basis for this assertion can be found in the Specification, paragraph 5, where

Appellants state, "[t]he layers for thin film heaters are typically formed using deposition processes such as ion plating, sputtering, chemical vapor deposition (CVD), and physical vapor deposition (PVD), among others."

These arguments do not persuade us that we overlooked or misapprehended any point argued on appeal. For example, in connection with the "layered process" claim element, Appellants have not persuaded us that we erred because the Specification renders the Examiner's interpretation unreasonable and/or mandates the Examiner to apply a narrower interpretation. Accordingly, Appellants have not persuaded us that Gardner does not show such a process. Figures 2A and 2B clearly show the application of material ("thin foil of copper" (Request 4)) to plastic substrates, and this process is clearly within the definition of layered processes, even if only in the "among others" category. *See* Spec. ¶ 43. In addition, as noted in our original Decision at page 4 ("[w]ithout explanation, Appellants argue . . . "), Appellants do not provide any argument as to why Gardner does not disclose forming conductive overlays by a process involving the application or accumulation of material to a substrate. Thus, we remain unpersuaded that the Examiner erred in finding Gardner discloses a layered process. *See* Decision 5–6. That Appellants may have intended the definition of "layered process" only to "capture the broad categories of [thin film, thick film, thermal spray, and sol-gel] processes and their variations, or species" (Request 3–4) does not negate the clear language of the definition that merely requires the layer be "formed through application . . . of a material to a substrate . . . using processes associated with [certain named processes] *among others* (Spec. ¶ 43) (emphasis added)."

We are not persuaded by Appellants' thin-film argument that we overlooked or misapprehended any point argued on appeal. Although "layering process" was specifically defined in the Specification (*see* ¶ 43 ("'layering processes' should be construed . . .")), "thin film" is not. Therefore, any construction of "thin film" must be consistent with the Specification, but we may not import limitations from the Specification into the claims. *See SuperGuide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) ("Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.") Appellants assert error because the Examiner gave "thin film" an "overly broad interpretation" that did not properly take into account "explicit support in the [S]pecification for its interpretation." Request 1, 2. Appellants would have us rectify this alleged failure by importing as claim limitations "ion plating, sputtering, chemical vapor deposition (CVD), and physical vapor deposition (PVD)." Spec. ¶ 5. But Appellants would also have us ignore other statements concerning thin films found in the Specification. For example, Appellants would have us ignore the word "typical," the phrase "such as" and the phrase "among others" from the above quoted sentence. Each of these connotes an open-ended listing, in this case an open-ended listing of thin film processes. The Decision upheld the Examiner's finding that Gardner's "layered thin film . . . made by a piercing rivetor" (Final Act. 6) falls within this open-ended listing of thin film processes. To the extent Appellants assert that "typical" and "among

others" "do not broaden the scope of the terms . . . 'thin film'" (or layered process) to any process whatsoever (Request 4), we agree. Nonetheless, we understand the term "thin film" to be limited to those processes that build a conductive layer by applying or accumulating material, which Gardner discloses, as the Examiner found.

For the foregoing reasons Appellants have not persuaded us that we overlooked or misapprehended any matters in rendering our Decision.

DECISION

Upon reconsideration and in view of the foregoing discussion, the prior art rejections of claims 9–12, 14, and 21–31 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

DENIED